

FLEMMING, ADMINISTRATOR OF SYME.

JANUARY 16, 1832.

Mr. BOULDIN, from the Committee on Revolutionary Claims, made the following

REPORT:

*The Committee on Revolutionary Claims, to which was referred the petition of John S. Flemming, administrator de bonis non of John Syme, deceased, report:*

That in December, 1778, John Syme, late of the county of Hanover, in the State of Virginia, contracted with Philip Aylett, a Commissary of Purchases in the service of the United States, to furnish flour for the use of the army of the revolution, at the price of £5 per barrel, with such increase of that price as Syme should obtain for the quantity of 100 barrels sold for cash to one person. Under this contract, Syme delivered a large quantity of flour in the year 1779; in September, 1783, Aylett having died, Syme brought suit against his executors, under the impression that Aylett had rendered himself personally liable by the original contract and circumstances attending it. The cause was continued, from term to term, until the year 1790; the continuances and causes assigned for them, showing that the defendants opposed the claim of Syme on every ground, and with good faith. In the said year 1790, a special verdict was rendered, settling and adjusting the amount due to Syme on the aforesaid contract, to be £931 5s. 10d, Virginia currency, subject to the opinion of the court, whether Aylett was personally liable for a contract made by him as Deputy Commissary General of Purchases for the United States.

The district court, in which this trial was had, adjourned the question so submitted by the said verdict, to the general court of Virginia, for novelty and difficulty, in which court it was continued for several terms; and, finally, the verdict was set aside for uncertainty, the subsequent proceedings indicating the real opinion of the court to have been, that the jury should have found as a fact whether Aylett designed to have made himself so liable or not. At a subsequent term the cause came on again, to be tried by a jury, which was instructed by the court to consider and find, from all the evidence, whether, by the contract, Aylett bound himself personally or not, and if he did, to find for the plaintiff; if he did not, to find for the defendants. Under these instructions the jury found for the defendants, and the court gave judgment accordingly. From this judgment Syme appealed to the court of appeals of Virginia, where, in the year 1797, the judgment was affirmed. By this time the affairs of Syme had become embarrassed,

and, in fact, as to pecuniary matters, he was entirely ruined. In some short time afterwards he became afflicted with paralysis, of which, in a few years, he died. At the time of his death, his rights and credits are presumed to have borne so small a proportion to his debts, that neither his relatives nor creditors deemed his estate worth administering on. Some years thereafter the estate was committed to the sheriff of the county of Hanover, with a view to make a formal party to a suit, and it is believed that no step was ever taken by the sheriff in the character of administrator. The petitioner alleges, in an affidavit filed by him, that, from feelings arising out of a situation detailed in his affidavit, he has, at a comparatively late period, paid a debt for which a security of the said John Syme was liable, and thereby made himself a judgment creditor, and by administering on the estate of the said Syme, produced an interest to look into his credits which would never have existed in his creditors at large. Your committee are of opinion, that the special finding of the jury in 1790, under the circumstances attending the trial, though not technically legal evidence against the United States, is yet better evidence of the verity of the facts included in it, than the affidavits and depositions upon which Congress is every day acting; and they cannot hesitate to believe, that, when it was rendered, the sum of money stated in it was due to Syme, for flour delivered by him for the use of the army of the revolution. They agree in opinion with the court, that the agent was not personally liable for the money, unless the same had been put in his hands by the United States, which supposition they think is negatived by the verdict itself; and is further reprobated by a certificate from the Register of the Treasury, showing that Aylett had accounted for all the money which come into his hands belonging to the United States. If the facts are, as your committee suppose them to be, they created an obligation, both legal and moral, on the part of the United States, to pay the said sum of money to the said John Syme, dischargeable only by doing so. But your committee are not to be understood as advancing the absurd proposition, that whosoever can now rake up proof of services rendered, or goods furnished the United States at any time, for more than half a century past, will thereby put the United States to proof of payment. Your committee are well aware of the total want of any thing like a regular record of disbursements on account of the public during the revolutionary war, and therefore deem it to be both just and necessary to regard every such claim as paid, unless the contrary appear by evidence entirely convincing.

This, with respect to the case under consideration, your committee think is shown. The suit was brought against the agent the year that peace was made; the amount was found due in 1790; the litigation continued to 1797, when it was finally decided that the money, though due, was not recoverable of the agent. Since 1790, (when the debt was certainly existing,) payment of such a claim could not have been made by the United States, without an existing record of the fact. Your committee have caused examination to be made, and from the certificates of the proper officers, it appears that no such payment has been made. Still it may be asked, why is it that application has never been made to any department of this Government until this time; and while, it may be said, that, under the circumstances before recited, this delay affords no presumption of payment, does it not militate much against the original justice of the demand? The answer is, that if the evidence on which the claim rests, was at all open or doubtful, such delay, if not accounted for, would be conclusive against the demand; but it weighs

nothing in this case. Syme did think the money due him; and, by suing the representatives of the contractor, who, from interest, would make, and no doubt did make, a rigid scrutiny into the character of his claim, he gave higher evidence of his confidence of its justice, than is afforded by that sort of continual claim made here, which is generally allowed to obviate the effects of the lapse of time. But your committee think this delay fully accounted for: in the first place, the courts kept Syme in suspense, until, by the resolution of 1787, his demand on the Treasury of the United States was barred; and the poverty of the Treasury at that time made it useless for any one to apply with a demand other than a technically living one. Syme's affairs had also gotten into that situation, which generally, if not universally, terminates vigilance. He was afflicted with paralysis, of which, in a few years, he died; and no person has had a sufficient interest to move in this business, until the petitioner qualified in 1831, as administrator de bonis non of his estate.

Your committee, therefore, herewith report a bill for the relief of the said John S. Flemming, administrator as aforesaid.

